

# *CITY COUNCIL*

## ***Public Works Committee***

**Monday, June 20, 2011**

**Agenda**

**5:00 p.m.**

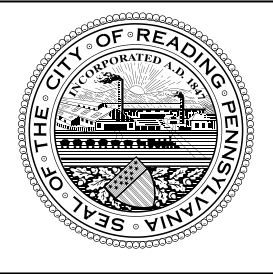
**Committee Members: M. Goodman-Hinnershitz Chair, D. Sterner, S. Marmarou**

*Although Council committee meetings are open to the public, public comment is not permitted. However, citizens are encouraged to attend and observe the committee meetings. Comment from citizens or professionals during the meeting may be solicited on agenda topics via invitation by the Committee Chair.*

- I. Peace Sign Restoration**
- II. Update Buttonwood Gateway Area**
- III. Egelman's Park**
- IV. Angelica Park Lease Agreement Review**
- V. Street Paving Projects**
- VI. Traffic Issues**
  - **Removal of multiple cross walks at College Ave & Bern St (Albright)**
  - **Installation of 5<sup>th</sup> and Bingaman Traffic Signal**
- VII. Automated Red Light Enforcement Transportation Enhancement Grants Program**
- VIII. Cutting/trimming grass and weeds at City property**
- IX. Ordinance Regulating Utilities in City Streets**

**Follow-up Issues:**

- **Stormwater Utility**
- **Former Police Academy Building**
- **Establish and Enforce a Utility Cut Program (PW 15)**
- **Fleet Maintenance Contract with Neighboring Municipalities (PW 03)**
- **Inventory of Lease Agreements (PW11)**
- **Seek Sponsorships for parks and park maintenance**
- **Capital Repairs to Library**
- **Managing all street lights**



# *CITY COUNCIL*

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## ***Public Works Committee***

***Monday, May 16, 2011  
Meeting Report***

**Committee Members Attending:** S. Marmarou, D. Sterner, M. Goodman-Hinnershitz Chair

**Others Attending:** S. Katzenmoyer, F. Denbowski, O. Smith, C. Geffken, G. Zolna, N. Walker

The Public Works Committee meeting was called to order at 5:05 pm.

### **Buttonwood Gateway Area – Develop Integrated Plan**

Ms. Goodman-Hinnershitz stated that the Committee requested a written plan for this area. Mr. Geffken distributed the plan prepared by the business analyst. He stated that the plan suggests that the Redevelopment Authority re-fence the area, that the solid waste division install a video camera, that the unused streets be vacated and closed to vehicles, and that RBI and Crime Alert signs are posted in the area.

Mr. Waltman arrived at this time.

Mr. Waltman suggested that area become a community garden. Ms. Goodman-Hinnershitz explained that community gardens rely on the area residents to maintain them. She questioned if there were enough residents present in this area.

Mr. Waltman suggested that the corner lot be paved and basketball nets installed for area youth. Ms. Walker explained that public works will be spraying this area for weed control. Mr. Geffken stated that the Redevelopment Authority owns this lot and improvements would

need to be made by the Authority.

Mr. Marmarou suggested that the public be made aware that this situation is being addressed.

Mr. Jones arrived at this time.

Mr. Waltman questioned the meaning of vacating the streets. Mr. Geffken explained that there are no properties on Lafayette Street or Johnson Street. He suggested that Council vacate the street and fence in the area.

Mr. Sterner questioned parking in the area and whether closing off these streets would cause problems. Mr. Geffken expressed his belief that parking would not be affected.

Mr. Waltman stated that the condition of the railroad tracks does not help this situation. Mr. Denbowski stated that Norfolk Southern will cooperate with the City for clean up purposes but that they will not provide manpower to do clean ups.

Ms. Goodman-Hinnershitz suggested that this plan be applied to other areas of the City as needed. She suggested that Mr. Waltman bring further comments and concerns forward as needed in this area.

Mr. Marmarou stated that this area has been a concern since the 1950's.

Mr. Geffken suggested that people referred to the City for community service be utilized for graffiti and litter/trash clean ups. He expressed his belief that the streets which are vacated can be reopened in the future as necessary.

Ms. Goodman-Hinnershitz noted the need for Crime Alert Berks County to be informed that signs will be posted in the area. Mr. Denbowski stated that he serves on this Board and will inform the chairperson.

Ms. Goodman-Hinnershitz suggested holding a town meeting in this neighborhood to provide an update to residents.

#### **Memorandum of Understanding – Reading Beautification Inc**

Mr. Denbowski stated that an updated Memorandum is attached which removes the free parking and addresses computer access. He stated that the executive director does not receive free parking but that RBI pays the parking fee. He stated that RBI provides its own computers

and pays for internet service. The computers will not be tied into the City's system.

Ms. Goodman-Hinnershitz noted the need for consistency between employee policy and other agencies.

Mr. Denbowski stated that the location of the RBI office will be changed. He explained that the Human Relations Commission will be moving into the former solid waste/call center offices and that RBI will be moving to the former Human Relations Commission space on the first floor.

Ms. Goodman-Hinnershitz expressed her thanks to RBI for their work on the Great American Clean Up. Ms. Walker stated that in addition, she has coordinated other clean ups with three occurring last week. She stated that RBI and the City have been working well together and sharing resources. She stated that RBI has extended her contract for an additional three months to continue working with community groups for clean ups through the summer months.

Ms. Goodman-Hinnershitz noted that residents are dumping yard waste at the top of Neversink. She expressed her hope that a clean up will be scheduled for Neversink Playground after the construction is complete.

#### **Memorandum of Understanding – Drenkel Field/Flying Dutchmen Aeromodlers**

Several Flying Dutchmen joined the meeting at this time.

The Flying Dutchmen showed a model and explained their use of the field.

Ms. Goodman-Hinnershitz questioned if they had literature which could be distributed at the Pagoda to draw interest in the Flying Dutchmen events. The Flying Dutchmen stated that they work closely with Pagoda Skyline and encourage participation on the field flying models during pagoda or tower events. They noted how they love to have youth observing and encourage them to try this hobby.

Mr. Sterner questioned if the Flying Dutchmen had special events that could be better advertised. The Flying Dutchmen stated that they do not have special events but that groups travel to other fields to fly. They stated that they do not have money to advertise but work through Pagoda Skyline for publicity.

Ms. Goodman-Hinnershitz requested a review of the Memorandum. Mr. Denbowski stated

that he learned through Public Works that the Flying Dutchmen did not have a formal agreement with the City. He stated that negotiations with Lower Alsace to turn this field into athletic fields have ceased. He stated that the City's legal staff has approved this MOU and that the Flying Dutchmen have been using the field for many years without a formal agreement.

Mr. Marmarou questioned if the field is located within the City. There was discussion regarding boundaries between Reading and Lower Alsace.

Ms. Goodman-Hinnershitz questioned if the group had problems with vandalism or dumping. The Flying Dutchmen stated that the gate keeps vehicles out and that neighbors have told them they are glad when the field is in use.

Ms. Goodman-Hinnershitz stated that the MOU did not have an expiration date. She suggested that the next Administration be aware of all the current MOUs and leases the City has.

Ms. Goodman-Hinnershitz questioned how long the Flying Dutchmen have been using the field. The Flying Dutchmen stated that the club has been active since 1938.

Mr. Marmarou stated that this group and those using Rotary Park help protect property.

The Flying Dutchmen stated that Drenkel Field has been rated the best location east of the Mississippi River.

The Flying Dutchmen noted the need for their group to continue using this field and requested protection from the City selling the field or leasing it to other parties. Ms. Goodman-Hinnershitz stated that the City must inform the Flying Dutchmen 60 days before ending the MOU. She questioned the need for a lease. Mr. Denbowski explained that a lease agreement would require more financial resources from the Flying Dutchmen as they would then assume additional liability at the field.

Mr. Sterner noted the need for the City to continue this type of agreement with local organizations and not take their access away. He also noted the need for all organizations to have formal agreements.

### **Traffic Issues**

- Request for Stop Sign at S 17<sup>th</sup> & Haak Sts

Ms. Goodman-Hinnershitz stated that she has not spoken with the principal of 16<sup>th</sup> & Haak about this issue.

Mr. Jones distributed copies of the study done by Spotts, Stevens, McCoy related to speeding on S. 17<sup>th</sup> St near the school. He stated that the study shows that vehicles are not speeding but the fact that cars are going downhill may increase the perception that they are.

Mr. Jones explained that if the School District pays to install flashing warning signals in the area that the maintenance of the signals would revert to the City.

Ms. Goodman-Hinnershitz suggested that this intersection be discussed with the School District as part of the overall plans to address school traffic issues City-wide.

- Pendora Parking

There was a brief discussion regarding some ball players' continued use of S 18<sup>th</sup> St for parking.

Mr. Smith stated that follow up is needed with the School District regarding school bus parking and suggested that this be a project for the Recreation Commission.

Ms. Katzenmoyer suggested planting thorny bushes along a portion of S 18<sup>th</sup> St to impede players from parking on S 18<sup>th</sup> St and walking through the thorns to access the ball field.

- Request for Traffic Signal at S 5<sup>th</sup> & Bingaman Sts

Mr. Jones stated that the City is ready to install flashing warning signals in this area but does not have the \$50,000 installation fee.

- Removal of Multiple Crosswalks at College Ave & Bern St (Albright)

Mr. Jones stated that he, Mr. Geffken, and Chief Heim recently met with Mr. Wood at Albright. He stated that an agreement was met regarding which crosswalks should be removed. Albright will prepare a plan for formal review. He stated that some crosswalks will remain as agreed.

Mr. Marmarou questioned the need for the pedestrian crossing signs during times when

students are not on campus. He stated that they are being moved haphazardly. Mr. Jones agreed that they are not needed when students are not on campus. *Note: many summer camps are held on campus when college students are not in session.*

### **Recreation Commission Update**

Mr. Denbowski stated that the City is waiting to hear from the School District regarding their level of funding.

Ms. Goodman-Hinnershitz suggested that this be finalized before the end of the school year and the departure of Mr. Vecchio. She also noted the need for Council not to adjust the City funding during budget discussions.

Mr. Jones noted that recreation is often a target for budget decreases.

Mr. Denbowski stated that the School District counsel has recommended some changes which will be reviewed by the work group at its next meeting. He noted his hope that the School District will fund \$100,000 - \$150,000 toward the Commission and that the formal agreement be signed by September.

### **Egelman's Park**

Ms. Goodman-Hinnershitz stated that the gate is always open and there are problems. She suggested that the gate remain closed and locked to allow pedestrian access only. She requested that this topic be added to next month's agenda for further discussion.

Mr. Jones stated that he will be unable to attend the June meeting but that Mr. Zeiber and Ms. Hoag will attend as necessary.

Mr. Jones noted that applications for CD funding are due at the end of June. He stated that he will be compiling an updated list for street paving projects which the Committee can review at their June meeting. Ms. Goodman-Hinnershitz also suggested that this list be reviewed at a future Committee of the Whole meeting so that all of Council can review the list.

The Public Works Committee adjourned at 6:07 pm.

Respectfully submitted by  
*Shelly Katzenmoyer, Deputy City Clerk*



BILL NO. 47-2007

AN ORDINANCE

**AUTHORIZING THE MAYOR TO EXECUTE THE LEASE BETWEEN  
THE CITY OF READING AND ALVERNIA COLLEGE FOR PREMISES BEING  
A PORTION OF ANGELICA PARK.**

**WHEREAS**, the City of Reading is the legal owner of certain property known as Angelica Park; and

**WHEREAS**, the City of Reading desires to lease a portion of said property to Alvernia College and intends to enter into a certain lease containing the terms set forth in attached Exhibit A;

**NOW, THEREFORE THE COUNCIL OF THE CITY OF READING  
HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The Mayor is authorized to execute any and all documents to facilitate and effectuate the lease between the City of Reading and Alvernia College for a certain portion of property known as Angelica Park in accordance with terms set forth in the attached Exhibit A.

**SECTION 2.** This Ordinance shall be effective ten (10) days after passage.

Enacted June 25, 2007

[Signature]  
President of Council

Attest:

[Signature]  
City Clerk

Submitted to Mayor: [Signature]

Date: 6-26-07

Received by the Mayor's Office: mt

Date: 6-26-07

Approved by Mayor: [Signature]

Date: 6/26/07

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 25<sup>th</sup> day of June, A. D. 2007. Witness my hand and seal of the said City this 27<sup>th</sup> day of June, A. D. 2007.

[Signature]  
CITY CLERK

## **LEASE AGREEMENT**

THIS AGREEMENT OF LEASE (the "Agreement") is dated to be effective the 1st day of July, 2007 (the "Commencement Date"), by and between CITY OF READING, a Pennsylvania municipal corporation, having an address at 815 Washington Street, Reading, Pennsylvania (the "Lessor") and ALVERNIA COLLEGE, a Pennsylvania nonprofit corporation, having an address at 400 St. Bernadine Street, Reading, Pennsylvania 19607 (the "Lessee")

### **BACKGROUND**

A. The Lessor is the owner of a tract of land and the improvements erected thereon located in Cumru Township, Berks County, Pennsylvania, being a portion of "Angelica Park", as depicted and/or described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises").

B. The Lessee desires to lease the Premises from the Lessor and to construct certain additional improvements at the Premises as more fully described in Article 3 herein, and the Lessor desires to lease to the Lessee the Premises under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Lessor and the Lessee hereby covenant and agree as follows:

### **ARTICLE 1**

#### **PREMISES AND TERM**

**Section 1.1 Grant of Lease.** Lessor for and in consideration of the terms, covenants, and conditions herein contained, does hereby lease unto the Lessee, and the Lessee does rent and lease from the Lessor the Premises for the uses and purposes as specifically described herein. The existing improvements at the Premises which are being leased to Lessee hereunder include a parking lot, four (4) tennis courts with lights, two (2) existing ball fields, and a grandstand.

TO HAVE AND TO HOLD the Premises for a term of twenty-nine (29) years and eleven (11) months commencing on the Commencement Date and expiring at midnight on the 31st day of May, 2037 (the "Term").

**Section 1.2 Negotiations for New Lease.** As of the twentieth (20<sup>th</sup>) anniversary of the Commencement Date, the parties agree to commence negotiations for a new Lease commencing as of the termination date of the within Lease, for a minimum term of ten (10) years at an annual rental not to exceed One Dollar (\$1.00) per year.

## **ARTICLE 2**

### **RENT**

**Section 2.1 Rent.** In consideration of the lease of the Premises, Lessee shall pay to Lessor on the Commencement Date the sum of One Dollar (\$1.00) for each year of the Term.

**Section 2.2 Manner of Payment.** All amounts payable under Section 2.1 of this Article, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the address of Lessor set forth above or at such other place as Lessor shall from time to time designate by notice to Lessee, in lawful money of the United States.

## **ARTICLE 3**

### **IMPROVEMENTS TO BE CONSTRUCTED BY LESSEE AT THE PREMISES**

**Section 3.1 Improvements by Lessee.** The parties agree that the Lessee shall construct one (1) baseball field and one (1) softball field, both of NCAA quality, including dugouts, new fencing and lighting at each of said fields. The Lessee shall also construct a building at the Premises containing restrooms, sport equipment storage athletic training facilities and a concession stand. The aforesaid improvements to be constructed by Lessee are hereinafter collectively referred to as the "Improvements". A final set of plans and specifications for the project will be provided to the Lessor prior to the Lessee beginning construction work at the

Premises. Subject to applicable regulatory approval, (i) the phasing of the construction of the Improvements shall be agreed by the parties from time to time, and (ii) Lessee shall make reasonable accommodations for storage of Lessor's mowing equipment.

**Section 3.2 Payment for Improvements.** Lessee shall be responsible for the entire cost of the Improvements.

**Section 3.3 Dedication of St. Bernadine Street.** Within six (6) months of the Commencement Date, the Lessor shall dedicate St. Bernadine Street as a public roadway through Angelica Park to Route 10.

**Section 3.4 Cessation of Lessor's Use of Premises**

Unless the Lessee shall provide prior written approval, Lessor shall not permit any use whatsoever of the Premises, including, but not limited to, recreational, league and/or tournament play, subsequent to the Commencement Date. Subject to applicable regulatory approval, Lessee shall promptly commence construction and use its best efforts to complete the Improvements, including the installation and establishment of turf for such uses.

**Section 3.5 Repair of Electrical Lines.** The Lessee shall repair the broken underground electrical line to the existing tennis courts.

**Section 3.6 Option to Construct.** The Lessee shall have the right, but not the duty, to construct two (2) additional tennis courts at the Premises, subject to applicable regulatory approval.

**Section 3.7 Repaving of Parking Lot.** Lessor, at its sole cost and expense, shall repave the parking lots at the Premises prior to or at the time that Lessee is constructing the baseball and softball fields at the Premises pursuant to Section 3.1 of this Lease, so that the parking lots are repaved upon completion of the construction of the baseball and softball fields.

#### **ARTICLE 4**

##### **USE OF THE PREMISES BY LESSEE AND LESSOR**

**Section 4.1 Lessee's and Lessor's Use of the Premises.** The Lessee and Lessor shall have the use of the Premises as follows:

- (a) For all baseball and softball games and tennis matches of the Lessee.
- (b) For other events hosted by the Lessee providing (i) the event does not cause unusual wear to the Premises, as determined in the reasonable discretion of the Lessor; and (ii) the use does not conflict with the Lessor's use of the Premises pursuant to the master schedule for the Premises to be maintained by the Lessee and shared with the Lessor.
- (c) The Lessor shall retain the right to use the fields and related facilities for recreational, league and/or tournament play. However, the Lessee shall have priority scheduling of the fields at the Premises during the NCAA prescribed softball and baseball sessions during the Lessee's Spring Semester.
- (d) The master schedule for the Premises shall be maintained by the Lessee and shared with the Lessor.
- (e) The concession stand shall be available for use by both the Lessee and the Lessor.
- (f) Access to the fields at the Premises will be limited to 8:00 a.m. to 10:00 p.m. daily, unless further restricted by agreement of the Lessor and Lessee. Public Safety employees of the Lessee shall lock and unlock the fences to the fields daily.

**Section 4.2 Compliance with Law.** The Lessee shall not use the Premises for any purpose in violation of any federal, state or municipal law currently existing or hereinafter promulgated, governing the use and safety of the Premises, and the Lessee shall at all times

ensure that its use of the Premises is within full compliance with all applicable statutes, ordinances and other requirements of Cumru Township.

**Section 4.3 Permits and Licenses.** The Lessee shall promptly procure, maintain and comply with all permits, licenses and government authorizations required for its use of the Premises as set forth herein.

**Section 4.4 No Violation of Insurance Contracts.** The Lessee and Lessor shall not use the Premises in any manner which would make void or voidable any insurance required to be carried by the Lessor or the Lessee or which will make it impossible for either party to obtain fire, general liability or other insurance.

**Section 4.5 Security.** The Lessee, at its expense, shall obtain adequate security and take necessary measures to provide for the safety of the attendees, participants and property at Lessee-hosted events at the Premises.

**Section 4.6 No Discrimination.** The Lessee covenants and agrees that during its use of the Premises, it will not discriminate against any person or persons on the basis of race, color, creed, religion, national origin, age, veteran status and/or disability.

## **ARTICLE 5**

### **PAYMENT OF EXPENSES**

**Section 5.1 Lessee's Obligations.** The Lessee shall have responsibility for maintenance of the Premises, and the payment of all costs related thereto, and for the payment of utilities at the Premises, including, but not limited to, routine maintenance and repairs to the parking lots at the Premises.

**Section 5.2 Maintenance Standards.** Lessee's Maintenance shall be performed in accordance with the Lessee's general standards of maintenance and repair.

**Section 5.3 Repairs by Lessor.** The Lessor shall be responsible for repairing any field damage resulting from use by Lessor-sponsored leagues, recreational or tournament play, or other uses of the Premises by Lessor.

**Section 5.4 Repairs to be Shared by Lessor and Lessee.** The Lessor and the Lessee shall each be responsible for fifty percent (50%) of the cost of major repairs, improvements, upgrades, and/or repaving of the parking lots at the Premises subsequent to the repaving of the parking lots to be performed by Lessor in accordance with Section 3.7 of this Lease.

#### **ARTICLE 6**

##### **GOVERNMENT APPROVALS**

**Section 6.1 Lessee's Responsibility to Obtain Government Approvals.** The Lessee shall obtain any governmental approvals necessary for the construction of the Improvements at the Premises. The Lessor will support and cooperate with the Lessee in any efforts to gain necessary government or municipal approvals.

#### **ARTICLE 7**

##### **INSURANCE**

**Section 7.1 Casualty Insurance.** The Lessee, during construction and for the Term of the Lease, shall keep all buildings and Improvements existing and hereinafter constructed insured against loss, damage or destruction by fire or such other hazards as are covered by and protected under policies of insurance commonly known as "Extended Coverage Insurance".

**Section 7.2 Liability Insurance.** Lessor and the Lessee shall provide insurance for risks associated with their respective use of and responsibilities related to the Premises in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury/death and property damage. The Lessor and the Lessee, will each, at their sole cost and expense, obtain and maintain insurance with insurance companies approved by the other for

general public liability, bodily injury and property damage arising from the use of the Premises by the insuring party, its agents, employees, students, guests, spectators, participants, officials, concessionaires or others, and shall provide each other with Certificates of Insurance naming the other party as an additional insured. If the Lessor is self-insured, the Lessor shall provide Lessee with proof of adequate reserves to meet the requirements of this Section. The parties shall review with each other the amount of insurance coverage every five (5) years.

**Section 7.3 Additional Insureds.** The Lessor and the Lessee shall each cause the other to be named as an additional insured on all such policies and provide proof that such coverage has been obtained and remains in effect during the term of this Agreement.

## **ARTICLE 8**

### **INDEMNIFICATION**

**Section 8.1 Indemnification by Lessor.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessee, its employees, agents, contractors, and/or students, the Lessor agrees to and does hereby indemnify and hold the Lessee harmless from all losses, costs, damages and expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessor; and (ii) the breach by Lessor of the provisions of this Agreement.

**Section 8.2 Indemnification by Lessee.** Except to the extent arising out of the negligent acts or omissions or willful misconduct of the Lessor, its employees, agents, contractors, invitees, spectators, participants, officials and/or concessionaires, the Lessee agrees to and does hereby indemnify and hold the Lessor harmless from all losses, costs, damages and



expenses, including reasonable attorneys' fees, resulting or arising from (i) any and all damage to any person or property, caused by the acts or omissions of its agents, employees, contractors, invitees, spectators, participants, officials, concessionaires, or other persons and from any cause whatsoever by reason of the use, occupation and enjoyment of the Premises by the Lessee; (ii) any penalty, damage or charge incurred or imposed by reason of any violation of law or ordinance, including, but not limited to zoning and building code ordinances, by Lessee and (iii) the breach by Lessee of the provisions of this Agreement.

**Section 8.3 Indemnification not Limited by Insurance.** Full compliance or failure to comply with the provisions of this Agreement relating to insurance shall in no way relieve or diminish the Lessor's or Lessee's responsibilities hereunder.

**Section 8.4 Survival of Termination of Agreement.** These indemnifications of the Lessor and the Lessee shall survive the termination of this Agreement.

**Section 8.5 Waiver of Immunity.** Lessor hereby waives any statutory immunity and limit on its liability as between the Lessor and the Lessee for claims arising pursuant to this Agreement, and specifically Articles 7 and 8, or the Lessor's use of the Premises.

## **ARTICLE 9**

### **ENVIRONMENTAL**

**Section 9.1 Compliance with Environmental Laws.** Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Premises. Lessor shall be solely responsible for compliance with any and all environmental and industrial

hygiene laws and for the remediation and/or removal of any hazardous materials, substances, wastes or other environmentally regulated substances located on the 0.355 acre tract of land to be acquired by Lessor from the Norfolk Southern Railway Company at the time Lessor acquires title to said tract of land in accordance with the condition precedent set forth in Article 24 of this Lease.

**Section 9.2 Environmental Indemnification.** Lessor and Lessee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) a party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises or activities conducted by the party thereon, unless the environmental conditions are caused by the other party. Lessor shall hold harmless and indemnify Lessee, and assume all duties, responsibilities and liabilities at its sole cost and expense (for payment of penalties, sanctions, forfeitures, losses, costs or damages) and be solely responsible for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to the condition of the 0.355 acre tract of land to be acquired by Lessor from the Norfolk Southern Railway Company pursuant to the requirement of Article 24 of this Lease at the time Lessor acquires title to said tract of land .

**Section 9.3 Indemnifications Survive Termination of Agreement.** The indemnifications of this Article 9 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions at the Premises or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Article 9 will survive the expiration or termination of this Agreement.

#### **ARTICLE 10**

##### **CONDEMNATION**

**Section 10.1 Condemnation.** In the event Lessor receives notification of any condemnation proceedings affecting the Premises, Lessor will promptly provide notice of the proceeding to Lessee. If a condemning authority takes all of the Premises, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

#### **ARTICLE 11**

##### **CASUALTY**

**Section 11.1 Casualty.** Each party shall provide the other notice of any casualty affecting the Premises within forty-eight (48) hours of the casualty. If any part of the Premises is damaged by fire or other casualty so as to render the Premises unsuitable, in Lessee's reasonable determination, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee shall be entitled to reimbursement for any prepaid rent on a pro rata

basis and for the undepreciated value of the Improvements constructed by Lessee at the Premises in accordance with Article 3 above.

## **ARTICLE 12**

### **DEFAULT AND RIGHT TO CURE**

**Section 12.1 Default by Lessee.** The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of rent if such rent remains unpaid for more than fifteen (15) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor will have the right to exercise any and all rights and remedies available to it under law and equity, including but not limited to termination.

**Section 12.2 Default by Lessor.** The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights available to it under law and equity, including but not limited to termination.

## **ARTICLE 13**

### **SIGNS**

**Section 13.1 General Signage.** Subject to applicable ordinances, signage shall be installed by the Lessee which shall identify the Premises as being both "the City of Reading's Angelica Park" and as "Home to Alvernia College Athletics."

**Section 13.2 Lessee's Signs.** The Lessee shall be permitted to display banners from the light poles and fences to identify the property as part of the Lessee's college campus.

**Section 13.3 Sponsorship Signs.** The Lessee shall be entitled to all revenue from any sponsorship signs which may be displayed at the Premises, provided that such revenue is expended by the Lessee for maintenance of the Premises.

## **ARTICLE 14**

### **ASSIGNMENT**

**Section 14.1 Assignment.** Either party hereto may assign or otherwise transfer its interest in this Agreement to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets without the consent of the other party. Any such assignment by the Lessee shall include its right of first refusal set forth in Article 23 below.

## **ARTICLE 15**

### **ENTIRE AGREEMENT**

**Section 15.1 Entire Agreement.** This Agreement contains and sets forth the entire agreement and understanding between the parties hereto and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than

as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by Lessor and Lessee. This Agreement shall be binding on the parties hereto, and their respective successors and assigns.

#### ARTICLE 16

##### NOTICES

**Section 16.1 Notices.** Notices given pursuant to this Agreement shall be in writing, shall be given by actual delivery or by mailing the same to the party entitled thereto at the address set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this Article. Notices given by mail shall be sent by United States mail, certified or registered, return receipt requested, or by recognized overnight courier. Notices shall be deemed to be received on the date of actual receipt. Notices shall be served or mailed to the following addresses, subject to change as provided above:

If to Lessor:	City of Reading 815 Washington Street Reading, PA 19601 Attn: Managing Director
With a copy to:	Charles D. Younger, Esquire City Solicitor 815 Washington Street Reading, PA 19601
If to Lessee:	Alvernia College 400 Saint Bernadine Street Reading, PA 19607-1799 Attention: Thomas F. Flynn, Ph.D., President
With a copy to:	Heidi B. Masano, Esquire Masano ♦ Bradley 1100 Berkshire Boulevard, Suite 201 Wyomissing, PA 19610

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**ARTICLE 17**

**SEVERABILITY**

**Section 17.1 Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

**ARTICLE 18**

**APPLICABLE LAW**

**Section 18.1 Applicable Law.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their successors and permitted assigns. The situs of this Agreement shall be Berks County, Pennsylvania and, subject to Article 19 below, if a dispute arises as a result of this transaction, the parties hereby submit to the jurisdiction of the Court of Common Pleas of Berks County. The parties agree that Berks County presents the most convenient forum for both parties. The parties consent to the personal jurisdiction and venue of the Court of Common Pleas of Berks County and the parties waive all objections based upon improper jurisdiction, venue, or forum non-conveniens. The parties intend and agree that a party in breach of this Agreement shall bear the burden and obligation of any and all costs and expenses, including reasonable counsel fees, incurred by the other party, if the other party is successful in any litigation in endeavoring to protect and enforce his or her rights under this Agreement. Failure of either party to insist upon strict performance of any of the terms of this Agreement shall in no way affect the right of such party to enforce those terms in the future.

**ARTICLE 19**

**MEDIATION**

**Section 19.1 Mediation.** Notwithstanding the provision of Article 18 set forth above, any disputes between Lessor and Lessee shall first be submitted to mediation, said mediation to be held by a mediator appointed from the list of qualified mediators determined by the Berks County Bar Association.

## **ARTICLE 20**

### **RELATIONSHIP OF THE PARTIES**

**Section 20.1 Relationship of the Parties.** It is the intention of the parties to create a nonexclusive Lease Agreement pursuant to which the Lessee and Lessor shall use the Premises in accordance with the terms of this Agreement. Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures or to render either party liable for the debts or obligations of the other party.

## **ARTICLE 21**

### **SURRENDER**

**Section 21.1 Surrender.** Upon termination of this Agreement, Lessee shall peaceably surrender the Premises to Lessor in a condition and repair similar to the condition and repair of the Premises on the Commencement Date, subject to the construction set forth in Article 3, reasonable wear and tear and damage by casualty excepted.

## **ARTICLE 22**

### **MEMORANDUM OF LEASE**

**Section 22.1 Memorandum of Lease.** In order for Lessee to obtain a policy of leasehold title insurance, the parties agree that concurrently with the execution of this Agreement they shall execute a memorandum of lease to be recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania setting forth: (i) the names of the parties in this Lease



Agreement; (ii) the term of this Lease; (iii) the location of the Premises subject to the Lease; and (iv) the Lessee's right of first refusal to purchase the Premises.

#### **ARTICLE 23**

##### **LESSEE'S RIGHT OF FIRST REFUSAL**

**Section 23.1 Lessee's Right of First Refusal.** If, at any time during the term of this Lease, Lessor shall receive a bona fide offer from any person to purchase the Premises, Lessor shall send Lessee a copy of the proposed contract and notify Lessee of the intention of Lessor to accept the said offer. Lessee shall have the right within thirty (30) days to accept the terms of the said contract in writing and within ninety (90) days thereafter to purchase the Premises in its own name or in the name of a nominee, for the gross purchase price and on the terms specified in said contract. If Lessee shall not so elect within the said period, Lessor may then sell the Premises to said buyer provided the said sale is on the said terms and conditions and for the price set forth in the said contract sent to Lessee.

If Lessee fails to execute the aforesaid right of first refusal in connection with a proposed sale, then such right shall be extinguished on the consummation of said sale; however, if such sale is not consummated, the right of first refusal shall remain in effect.

#### **ARTICLE 24**

##### **CONDITIONS PRECEDENT**

**Section 24.1 Conditions Precedent.** Lessee's obligations hereunder are conditioned upon Lessor obtaining fee simple title from the Norfolk Southern Railway Company, successor to Pennsylvania Lines, LLC, (the "Railroad") of all that certain 0.355 acre tract of land located in Cumru Township, Berks County, Pennsylvania as more fully described and depicted on Exhibit "B" attached hereto and incorporated herein by reference (the "Railroad Land"), with the Railroad reserving an easement for its existing signboards, existing fiber optic lines, poles, pipes,

wires, communications, signal facilities and facilities of like character used in the operation of the Railroad. In connection with Lessor's acquisition of the Railroad Land, Lessee shall pay or has paid the following expenses of Lessor and perform the following obligations of Lessor in accordance with the terms of a Purchase Contract between Lessor and the Railroad for the Railroad Land dated September 29, 2006:

- (a) The purchase price of Twenty Thousand Dollars (\$20,000.00) to be paid by Lessor to the Railroad for acquisition of the Railroad Land.
- (b) Lessee shall engage a Pennsylvania registered land surveyor to perform a survey of the Railroad Land and prepare a legal description thereof, which shall be certified to the Railroad. The survey and legal description shall be in a format acceptable for recording in the Berks County Recorder of Deeds Office and shall be subject to the approval of the Railroad.
- (c) Lessee shall secure a title insurance commitment and title insurance for the Railroad Land, insuring Lessor's title.
- (d) Lessee shall pay Lessor's share of property taxes, assessments and rentals, which will be pro rated between Lessor and the Railroad as of the date of closing.
- (e) Lessee shall pay all of the closing costs related to the closing on the Railroad Land, including, but not limited to all realty transfer taxes, which are the obligation of Lessor under its Purchase Contract with the Railroad.
- (f) Lessee shall obtain all required permits, licenses, approvals, zoning, subdivision compliance and financing required to be obtained by Lessor in connection with its acquisition and use of the Railroad Land.

(g) Lessee shall obtain any Phase I, and if necessary, Phase II site assessments for the Railroad Land that Lessor shall require in connection with its purchase of the Railroad Land.

(h) Lessee shall erect and/or reconfigure and thereafter maintain a chain link fence not less than six feet (6') in height along the common property boundary between the Railroad and those other abutting lands owned by the Lessor. Lessee shall provide Lessor with a plan showing the design and placement of said fence, which shall be subject to the approval of the Railroad's Division Engineer pursuant to the terms of the Purchase Contract. Should Lessor be required to indemnify the Railroad as a result of the failure to properly maintain the fence in accordance with the term of the Purchase Contract, Lessee shall indemnify the Lessor therefor, pursuant to the terms of Section 8.2 of this Lease.

In the event the Lessee is unable to record the deed for the Railroad Land by July 1, 2009, Lessee may terminate this Lease upon written notice to Lessor.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals on the day and year first above written.

Attest:

CITY OF READING

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

"Lessor"

ALVERNIA COLLEGE

By: \_\_\_\_\_

Douglas F. Smith, Vice President

"Lessee"

**From:** Piper, Alan  
**Sent:** Tuesday, May 31, 2011 8:40 AM  
**To:** Piper, Alan  
**Subject:** Funding Opportunity - Traffic Signals and Safety

The following information appeared in the Saturday edition of the Pennsylvania Bulletin. Municipalities interested in applying for funding for safety or traffic signal improvements under the State's ARLE program should investigate this opportunity. Applications are due back to PennDOT by July 31, 2011. Please forward to your municipal engineers.

## NOTICES

### **Invitation to Submit Applications Under the Automated Red Light Enforcement Transportation Enhancement Grants Program**

**[41 Pa.B. 2789]**

**[Saturday, May 28, 2011]**

Under 67 Pa. Code Chapter 233 (relating to transportation enhancement grants from automated red light enforcement system revenues), the Department of Transportation (Department) is inviting city, county and municipal governments, and other local boards or bodies with authority to enact laws relating to traffic in this Commonwealth, to submit applications, in accordance with the parameters delineated in 67 Pa. Code Chapter 233. Applications will be accepted until July 31, 2011.

Applications can be obtained at:

<ftp://ftp.dot.state.pa.us/public/Bureaus/HighwaySafety/ARLE%20Grant%20Application.doc>

Additional guidance information can be found on the Department's Traffic Signal Resource Portal located at

[http://www.dot.state.pa.us/Portal%20Information/Traffic%20Signal%20Portal/index\\_files/Automated\\_Red\\_Light\\_Enforcement.htm](http://www.dot.state.pa.us/Portal%20Information/Traffic%20Signal%20Portal/index_files/Automated_Red_Light_Enforcement.htm)

Completed applications should be submitted electronically to [ARLE\\_Grants@state.pa.us](mailto:ARLE_Grants@state.pa.us) and be followed by the submission of a hard copy. Any questions should be directed to Larry Shifflet, Director, Center for Program Development and Management, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 787-2862, [ARLE\\_Grants@state.pa.us](mailto:ARLE_Grants@state.pa.us).

BARRY J. SCHOCH, P.E.,  
Secretary

**[Pa.B. Doc. No. 11-919. Filed for public inspection May 27, 2011, 9:00 a.m.]**

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Alan D. Piper  
Transportation Planner III  
Berks County Planning Commission

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Phone: (610)-478-6300 Ext. 6313  
Fax: (610)-478-6316  
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